

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

HACIENDA RECORDS, L.P. §
§
Plaintiff, §
§
vs. § NO: 2:14-CV-00019
§
RUBEN RAMOS, ET AL. §
§
Defendants/Counter Plaintiffs/ § JURY DEMAND
Cross Plaintiffs. §

**DEFENDANTS' EXPEDITED MOTION TO STRIKE HACIENDA'S APPLICATION
FOR ATTORNEY'S FEES AND COSTS, OR ALTERNATIVELY, TO STRIKE THE
FOOTNOTES INCLUDED IN THE APPLICATION AND MOTION FOR EXTENSION
OF TIME AND LEAVE TO EXTEND THE NUMBER OF PAGES TO RESPOND TO
HACIENDA'S APPLICATION FOR ATTORNEY'S FEES AND COSTS**

TO THE HONORABLE COURT:

COME NOW Defendants/Counter Plaintiffs/Cross Plaintiffs ("Defendants") and file this Expedited Motion to Strike Hacienda's Application for Attorney's Fees and Costs, or Alternatively, to Strike the Footnotes Included in the Application and Motion for Extension of Time and Leave to Extend the Number of Pages to Respond to Hacienda's Application for Attorney's Fees and Costs (Doc. No. 212). In support hereof, Defendants respectfully show as follows:

**I. MOTION TO STRIKE HACIENDA'S APPLICATION FOR ATTORNEY'S
FEES AND COSTS, OR ALTERNATIVELY TO STRIKE FOOTNOTES
INCLUDED IN THE APPLICATION**

1. On July 18, 2016, the Court entered an Order allowing Hacienda to file a motion for costs and fees in this case (Doc. No. 206).
2. On July 25, 2016, Hacienda filed an Expedited Motion for Extension of Time and for

Leave to Extend the Number of Pages for Fees and Costs (Doc. No. 208). On July 27, 2016, the Court granted Hacienda’s Motion, and allowed it ten additional pages (for a total of 35 pages) and ten additional days to file its Application for Costs and Fees (Doc. No. 209) (emphasis added). On August 11, 2016, Hacienda filed its Application for Costs and Fees (Doc. No. 212) (the “Application”).

3. Hacienda's Application is, in fact, much longer than what was permitted by the Court's Order—especially when taking into account the approximately ten pages of footnotes typed in 10-point, single spaced, font (Doc. No. 212, at pp. 4, 7, 9-16, 18, 20, 21, 23, 24, 25, 26, 30, 31, and 34). Entire substantive sections of Hacienda's argument—specifically, the entire “Background Facts,” Section III A-O – are comprised of nothing but footnotes, as exemplified here:

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Doc. No. 212, at p. 10. In fact, pages 9 through 15 of the Application, are entirely comprised of footnotes (Doc. No. 212, at pp. 9-15).

4. If the Application was written entirely in 12-point, double spaced font, as required by the Court (Doc. No. 127), *it would total over 86 pages*¹! The entire Application is 20,900 words. In comparison, the word limit for a principal brief in federal appellate court is 14,000 words. Fed. R. App. P. 32(a)(7)(B)(i). Footnotes do count toward the word limitation in federal appeals court. Fed. R. App. P. 32(a)(7)(B)(iii).

5. Footnotes are an “instrument generally used for tangential details.” See *Leonardo v. Health Care Services Corp.*, 2010 WL 317520, at *10, FN 1 (N.D. Ill. Jan. 20, 2010). However, the footnotes included in Hacienda’s Application contain more than marginal or inconsequential detail. They raise new and substantive issues that demand a response from Defendants, as exemplified here:

¹⁰ The vague and global claims of infringement to 434 works were completely frivolous. The produced copyright registrations revealed the Songwriter Claimants either did not own the compositions which they alleged, or Claimants testified Hacienda had permission to use the compositions, or Hacienda had not used the compositions. See Doc. 67 at 17-19; Doc. 130 at 4-10; Doc. 143; Doc. 160 at 2-6. See also Doc. 126 at 10-11 (false allegations that Hacienda used the work *Oiga Senora*). At one point, Showalter completely abandoned claims to 144 compositions, acknowledging Hacienda had not used these works. See Doc. 143-1. Showalter’s frivolous allegations multiplied these proceedings, requiring the depositions of the Claimants, and requiring summary judgment motions and replies. It is no surprise that at the eleventh hour, after Hacienda, its counsel, and the Court were required to expend significant time and resources on such frivolous claims, that Showalter abandoned them. See Doc. 161 (claims of Martinez, Salcedo and Sanchez completely abandoned).

Doc. No. 212, at p. 11, FN 10.

6. Every statement included in the Application’s footnotes will require multiple sentences to adequately respond. For instance, in Footnote No. 10, as excerpted above, Hacienda

¹ See Ex. A, a true and correct copy of which is attached hereto.

completely ignores the fact that it was the party who included 434 works in this lawsuit—the majority of which included musical compositions and sound recordings to which it had no claims, contractually or otherwise, and which it had never used or exploited (Doc. No. 6-3). In its Second Amended Petition, Hacienda erroneously claimed that the 434 works listed are “included on Hacienda products” (Doc. No. 6, at pp. 2-3, ¶ 9). As a result, Defendants were forced to protect their rights and litigate ownership of works to which Hacienda had absolutely no claim. Incredulously, Hacienda is attempting to collect fees and costs for work related to its own baseless claims. This example is simply one of the many falsehoods included in Hacienda’s excessive footnotes that Defendants must address in their Response.

7. Hacienda’s abuse of footnotes in the Application is a clear violation of the Court’s Order (Doc. No. 209), which authorized a 10-page extension, for a total of 35 pages. Further, it is a clear violation of the Court’s Amended Scheduling Order, wherein the Court explicitly states:

“Page limits may not be circumvented by font less than 12-point (13-point font or larger is preferred)...or line spacing less than double (with the exception of appropriate block indents and footnotes).”

Doc. No. 127, at p. 3, no. 11 (emphasis added). Hacienda cannot reasonably argue that including entire sections of substantive argument in ten pages worth of footnotes is an appropriate use of footnotes. It is apparent that Hacienda explicitly used footnotes to circumvent the Court’s page restrictions—despite the Court’s previous allowance of ten additional pages for briefing.

8. It is improper to use footnotes to evade page limitations set by the Court, and federal courts have held that use of excessive footnotes is a sanctionable offense. *See Kano v. Nat’l Consumer Coop. Bank*, 22 F.3d 899 (9th Cir. 1994) (wherein the Court imposed sanctions on a party who used improper line spacing and excessive footnotes in a brief); *see also Jo.R. ex rel. C.R. v.*

Garden Grove Unified School Dist., 551 Fed. Appx. 902, 904 (9th Cir. 2013) (wherein the Court concluded that the trial court abused its discretion by failing to award fees as a sanction for submitting a brief with excessive footnotes). Hacienda's clear misuse of footnotes to make pages worth of substantive argument, *in an obvious effort to circumvent the Court's page limitations*, is disrespectful to the Court and unfair to Defendants— who, to date, are limited to 25 pages to respond to an 86-page brief. As such, Defendants respectfully request that the Court strike Hacienda's Application (Doc. No. 212) in its entirety and deny Hacienda's request for attorney's fees and costs or, in the alternative, strike and disregard all footnotes included in Hacienda's Application.

II. MOTION FOR EXTENSION OF TIME AND LEAVE TO EXTEND THE NUMBER OF PAGES IN RESPONSE TO HACIENDA'S APPLICATION FOR ATTORNEY'S FEES AND COSTS

9. In its Motion for Extension of Time, Hacienda claimed that it needed ten additional pages and ten additional days to file its Application for Costs and Fees. The Motion stated: “This case is not a typical case of one plaintiff and one defendant...There were multiple complaints and counterclaims, multiple motions, multiple hearings, broad discovery demands, and multiple depositions, and, of course, significant work performed by counsel for almost three years.”

(Doc. No. 208 at pp. 1-2, ¶ 3). These same arguments apply to Defendants' time and endeavors in litigating this case. The effort expended in this case, the excessive volume of Hacienda's Application, the complexity of the claims, and the vicious personal attacks waged against Defendants and their attorney require a thorough and detailed response from Defendants that cannot be accomplished in 25 pages.

10. Prior to filing this Motion, Defendants' attorney, David Showalter, conferred with Hacienda's attorney, Roland Garcia, Jr., who advised that he does not oppose an extension of ten

additional day and ten additional pages in which to respond to Hacienda's Application.²

11. It is unfair and unjust to limit Defendants' response to just 25 pages– or even 35 pages– when they must address multifarious arguments ensconced in an *86-page brief*. In the interest of fairness and equity, Defendants respectfully request twenty (20) additional pages and thirty (30) additional days to file their Response to Hacienda's Application to ensure that it is adequately responsive to each point raised by opposing counsel.

12. Defendants further request an expedited ruling due to the upcoming deadline of September 1, 2016. This motion is not filed for delay, but so that justice may be served.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request as follows:

- 1) That the Court strike Hacienda's Application for Attorney's Fees and Costs (Doc. No. 212), or alternatively strike and disregard all footnotes included in Hacienda's Application for Attorney's Fees and Costs;
- 2) That the Court allow Defendants a 30-day extension to file their Response to Hacienda's Application for Costs and Fees (Doc. No. 212);
- 3) That the Court allow Defendants 20 additional pages of briefing in which to respond to Hacienda's Application for Costs and Fees (Doc. No. 212), for no more than 45 pages in the Response; and
- 4) That the Court consider this Motion on an expedited basis due to the upcoming deadline.
- 5) Such other and further relief to which Defendants may prove themselves entitled, or which the Court may deem appropriate.

² Mr. Garcia, Jr. stated that he is opposed to an extension of more than ten additional pages or ten additional days.

Respectfully submitted,

By: /s/ David W. Showalter

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CERTIFICATE OF CONFERENCE

I hereby certify that I communicated with Mr. Garcia, Jr, via e-mail, on August 29, 2016, regarding Defendants' Motion to Strike Hacienda's Application for Attorney's Fees and Costs, or Alternatively to Strike the Footnotes Included in the Application. Mr. Garcia responded that he is opposed to the requested relief.

I further certify that my co-counsel, David W. Showalter, communicated with Mr. Garcia, via e-mail, regarding Defendants' Motion for Extension of Time and Leave to Extend the Number of Pages to Respond to Hacienda's Application for Attorney's Fees and Costs. Mr. Garcia indicated that he is unopposed to ten (10) additional days and ten (10) additional pages; but opposes any extension beyond that.

/s/ Lauren Welch Scott

Lauren Welch Scott

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served through the Court's ECF system to all counsel of record on August 29th, 2016.

/s/ Lauren Welch Scott

Lauren Welch Scott